

Message Text

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UNCLAS SECTION 01 OF 03 VIENNA 06982

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TAGS: PFOR, UN
SUBJECT: UN CONFERENCE ON SUCCESSION OF STATES IN RESPECT
TO TREATIES

1. THE U.N. COUNCIL FOR NAMIBIA DELEGATION YESTERDAY
MADE A STATEMENT IN THE CONFERENCE COMMITTEE OF THE WHOLE
EMPHASIZING THE CLAIM TO WALVIS BAY AS AN INTEGRAL PART
OF NAMIBIA AND RESTATING THE PROPOSAL MADE AT THE FIRST
SESSION OF THE CONFERENCE LAST YEAR FOR INCLUSION OF
LANGUAGE IN THE PREAMBLE OF THE CONVENTION TO THE EFFECT
THAT SOUTH AFRICA IS NOT THE "PREDECESSOR STATE" IN THE
CASE OF NAMIBIA. TEXT OF STATEMENT IS AS FOLLOWS:

QUOTE THE DELEGATION OF THE COUNCIL FOR NAMIBIA IS HAPPY
TO BE PARTICIPATING IN THE RESUMED SESSION OF THIS
CONFERENCE ON SUCCESSION OF STATES IN RESPECT OF TREATIES
AT A TIME WHEN THE UNITED NATIONS SECURITY COUNCIL HAS
INITIATED ACTION TO ENSURE THE EARLY ATTAINMENT OF IN-
DEPENDENCE OF NAMIBIA THROUGH FREE ELECTIONS UNDER THE
SUPERVISION AND CONTROL OF THE UNITED NATIONS, WHICH
ACTION IS INTENDED TO TERMINATE THE ILLEGAL OCCUPATION
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OF THE INTERNATIONAL TERRITORY OF NAMIBIA BY SOUTH AFRICA.
AS THE LEGAL ADMINISTERING AUTHORITY FOR NAMIBIA, THE
COUNCIL FOR NAMIBIA WILL CONTINUE ACTIVELY TO REPRESENT
AND PROTECT THE INTERESTS OF THE NAMIBIAN PEOPLE UNTIL
THEY ARE ENABLED TO FREELY EXERCISE THEIR INALIENABLE
RIGHT TO SELF-DETERMINATION AND INDEPENDENCE AND TO THE
TERRITORIAL INTEGRITY OF A UNITED NAMIBIA, INCLUDING

WALVIS BAY WHICH HAS BEEN APPROPRIATED BY FORCE BY SOUTH AFRICA. BEFORE RESTATING THE COUNCIL'S POSITION ON THE DRAFT ARTICLES BEFORE THE CONFERENCE FOR ITS CONSIDERATION, I WOULD LIKE TO CONGRATULATE THE MEMBERS OF THE DRAFTING COMMITTEE FOR SUCCESSFULLY COMPLETING A SUBSTANTIAL PART OF REVIEWING THE DRAFT ARTICLES OF THE INTERNATIONAL LAW COMMISSION (ILC), WHICH HAVE BEEN ADOPTED BY THE
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COMMITTEE OF THE WHOLE AND THE CONFERENCE. THE DELEGATION OF THE COUNCIL FOR NAMIBIA WILL CONTINUE TO PARTICIPATE ACTIVELY IN ALL ASPECTS OF THE CONFERENCE'S DELIBERATION AND EFFECTIVELY CONTRIBUTE TO THE EARLY AND SUCCESSFUL COMPLETION OF THE REVIEW AND ADOPTION OF THE REMAINING ARTICLES. THE COUNCIL COMMENDS THE PAINSTAKING WORK OF THE ILC IN PREPARING THE DRAFT ARTICLES, WHICH CONSTITUTE ANOTHER LANDMARK IN THE PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW. THE DELEGATION OF THE COUNCIL FOR NAMIBIA SHARES THE BASIC PHILOSOPHY CONTAINED IN THE DRAFT ARTICLES WHICH ARE GENERALLY BASED ON THE VIENNA CONVENTION OF THE LAW ON TREATIES, THE GENERAL PRINCIPLES OF INTERNATIONAL LAW AND PRACTICE, AND THE CHARTER OF THE UNITED NATIONS. WE NOTE WITH SATISFACTION THE RETENTION OF THE "CLEAN STATE" PRINCIPLE, WHICH RECOGNIZES THE RIGHT OF A NEWLY INDEPENDENT STATE TO DECIDE WHETHER IT WISHES TO BE A PARTY TO ANY TREATY BY
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WHICH THE PREDECESSOR STATE WAS BOUND. THE PRINCIPLE SAFEGUARDS THE LEGITIMATE INTERESTS OF NEWLY INDEPENDENT STATES AND ENABLES THEM TO REJECT THOSE COLONIAL LEGACIES WHICH ARE PREJUDICIAL TO THEIR ECONOMIC VIABILITY AND INIMICAL TO THE WELL BEING OF ITS INHABITANTS. THIS PRINCIPLE IS OF VITAL RELEVANCE AND IMPORTANCE FOR SAFEGUARDING THE INTERESTS OF THE PEOPLE AND TERRITORY OF NAMIBIA AND ITS NATURAL RESOURCES, WHICH HAVE BEEN SUBJECTED TO EXPLOITATION BY THE RACIST PRETORIA REGIME OF SOUTH AFRICA. IT IS RECALLED IN THIS CONNECTION THAT THE GENERAL ASSEMBLY OF THE UNITED NATIONS BY RESOLUTION 2145 OF THE 21ST SESSION ADOPTED ON 27 OCTOBER 1966 TERMINATED THE MANDATE OF SOUTH AFRICA OVER NAMIBIA AND ASSUMED DIRECT RESPONSIBILITY FOR THE TERRITORY UNTIL ITS INDEPENDENCE. THE COUNCIL FOR NAMIBIA NOTES WITH REGRET THE INTRODUCTION OF EXCEPTIONS TO THE GENERAL APPLICATION OF THE "CLEAN STATE" PRINCIPLE, WHICH MIGHT CREATE MISUNDERSTANDINGS IN COUNTRIES WHICH HAVE BEEN VICTIMS OF DISMEMBERMENT AND ILLEGAL MILITARY OCCUPATION, LIKE NAMIBIA. THE UNITED NATIONS SECURITY COUNCIL IN ITS RESOLUTION 385 OF 1976 AFFIRMED THE TERRITORIAL INTEGRITY AND UNITY OF NAMIBIA. THE SECURITY

COUNCIL IN ITS RESOLUTION 432 OF 27 JULY 1978 HAS DECLARED THAT WALVIS BAY MUST BE RETURNED TO NAMIBIA. THERE IS THUS NO QUESTION THAT WHEN NAMIBIA ATTAINS ITS INDEPENDENCE, WALVIS BAY MUST BE DE-COLONIZED AT THE SAME TIME AS AN INTEGRAL PART OF NAMIBIA. THEREFORE, THE DELEGATION OF THE COUNCIL AT LAST YEAR'S MEETING OF THIS CONFERENCE HAD REQUESTED SOME MODIFICATION IN THE RELEVANT ARTICLES TO REFLECT HISTORICAL REALITIES AND ESPECIALLY THE FACT THAT SOUTH AFRICA IS NOT THE "PREDECESSOR STATE"

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IN THE CASE OF NAMIBIA. OUR DELEGATION HAD ALSO SOUGHT REFORMULATION OF DRAFT ARTICLE 2 WHICH WOULD TAKE INTO ACCOUNT THE CAPACITY IN WHICH THE UNITED NATIONS IS RESPONSIBLE FOR THE INTERNATIONAL RELATIONS OF NAMIBIA AND TO REFLECT THE UNIQUE NATURE OF THAT RESPONSIBILITY. THE COUNCIL RECOGNIZES THE ESSENTIAL IMPORTANCE TO NAMIBIA OF THE "CLEAN STATE" PRINCIPLE , WHICH IS BASED ON THE RIGHT OF PEOPLES TO SELF-DETERMINATION. THE COUNCIL IS OF THE OPINION THAT IN THE QUITE UNIQUE CASE OF NAMIBIA, WHICH IS WITHOUT PRECEDENT AND THE ONLY ONE WHICH HAS THE STATUS OF INTERNATIONAL TERRITORY, THE NON-APPLICATION OF THE "CLEAN STATE"PRINCIPLE WILL IMPOSE INTOLERABLE AND UNACCEPTABLE BURDENS ON INDEPENDENT NAMIBIA. THE COUNCIL CANNOT REMAIN SILENT ON THE QUESTION OF ANY POSSIBLE EXCEPTIONS TO THIS PRINCIPLE IN CASE IT IS MISINTERPRETED AS THE COUNCIL'S RECOGNITION OF SOUTH AFRICA'S ATTEMPT TO DISMEMBER NAMIBIA, WHICH IT HAS CONTINUED

ILLEGALLY TO OCCUPY AND ADMINISTER. THIS WOULD BE
CONTRARY TO THE INALIENABLE RIGHT OF ITS PEOPLE TO SELF-
DETERMINATION AND TO THE PRESERVATION OF THE TERRITORIAL
INTEGRITY OF THEIR COUNTRY. IT WOULD ALSO BE IN CONTRA-
DICTION TO GENERAL ASSEMBLY RESOLUTION 1514 (XV) ON
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THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND
PEOPLES, WHICH INTER ALIA STATES IN PARAGRAPH 6 THAT:
'ANY ATTEMPT AIMED AT THE PARTIAL OR TOTAL DISRUPTION OF
THE NATIONAL UNITY AND THE TERRITORIAL INTEGRITY OF A
COUNTRY IS INCOMPATIBLE WITH THE PURPOSES AND PRINCIPLES
OF THE CHARTER OF THE UNITED NATIONS'. THIS CONFERENCE
SHOULD NOT BE SEEN AS LEGITIMIZING ARBITRARY ACQUISITIONS
OF TERRITORY BY A COLONIAL AND RACIST STATE THROUGH CLAIMS
BASED ON UNEQUAL AND SPURIOUS TREATIES OR AGREEMENTS.
THE DISMEMBERMENT OF NAMIBIA AND THE DETACHMENT OF WALVIS
BAY WAS BROUGHT ABOUT PURELY FOR ECONOMIC AND STRATEGIC
REASONS AND WITH DELIBERATE INTENT TO KEEP NAMIBIA IN
A PERMANENT SITUATION OF ECONOMIC SUBORDINATION OF SOUTH
AFRICA AND OTHER COLONIALIST COUNTRIES, WHOSE OBJECTIVE
IS PLAINLY TO CONTINUE TO EXPLOIT THE NATURAL RESOURCES
OF NAMIBIA TO THEIR OWN ADVANTAGE. BUT TAKING INTO
ACCOUNT HISTORICAL, GEOGRAPHICAL, CULTURAL AND ETHNIC
AFFINITIES, NAMIBIA'S ENTITLEMENT TO WALVIS BAY IS BEYOND
DOUBT AND SHOULD BE RESPECTED UNIVERSALLY. THE COUNCIL
THEREFORE REAFFIRMS THAT INDEPENDENT NAMIBIA SHOULD NOT
BE SADDLED WITH COLONIAL INEQUITIES, AND ITS TERRITORIAL
INTEGRITY MUST BE ASSURED BY INTERNATIONAL LAW. MR.
CHAIRMAN, WITH YOUR PERMISSION AND BECAUSE OF THE IMPOR-
TANCE AND URGENCY THIS QUESTION HAS NOW ASSUMED, LET ME
BRIEFLY OUTLINE THE PERTINENT HISTORICAL DEVELOPMENTS
CONCERNING WALVIS BAY FOR THE INFORMATION OF THIS
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CONFERENCE IN ORDER TO STRESS THAT SOUTH AFRICA IS NOT
THE "PREDECESSOR STATE" IN THE CASE OF NAMIBIA. PRIOR TO
THE ARRIVAL OF THE FIRST EUROPEAN SETTLERS IN SOUTH AFRICA,
WALVIS BAY WAS AN INTEGRAL PART OF NAMIBIA AND WAS
INHABITED BY NATIVE NAMIBIANS, THE NAMAS. THIS BAY WAS
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SUBSEQUENTLY OCCUPIED BY BRITAIN AND THE REST OF NAMIBIA
(THEN SOUTH-WEST AFRICA) BY GERMANY. WALVIS BAY WAS
HOWEVER NOT INTEGRATED INTO THE CAPE COLONY AS WERE THE
AREAS CONTIGUOUS TO THE COLONY. AFTER THE DEFEAT OF
GERMANY IN WORLD WAR I AND AT THE TIME OF THE UNION, WALVIS
BAY WAS OCCUPIED, AS A POSSESSION OF THE CAPE COLONY, BY

SOUTH AFRICA. THEREAFTER SOUTH AFRICA EXTENDED TO WALVIS BAY AND THE LAWS APPLICABLE TO THE ENTIRE TERRITORY OF SOUTH-WEST AFRICA. IN 1922 SOUTH AFRICA INCORPORATED WALVIS BAY INTO NAMIBIA BY THE ENACTMENT OF A SERIES OF LEGISLATION IN THE UNION PARLIAMENT, WHICH CULMINATED IN PLACING WALVIS BAY COMPLETELY UNDER THE TERRITORIAL JURISDICTION OF NAMIBIA. IN 1966 THE GENERAL ASSEMBLY OF THE UNITED NATIONS TERMINATED SOUTH AFRICA'S MANDATE OVER SOUTH-WEST AFRICA OR NAMIBIA AND PLACED IT UNDER THE DIRECT RESPONSIBILITY OF THE UNITED NATIONS. IN 1967 THE GENERAL ASSEMBLY ESTABLISHED THE UNITED NATIONS COUNCIL FOR NAMIBIA TO ADMINISTER THE TERRITORY UNTIL INDEPENDENCE. BUT SOUTH AFRICA HAS CONTINUED TO DEFY THE UNITED NATIONS BY ITS REFUSAL TO WITHDRAW ITS ADMINISTRATIVE AND MILITARY MACHINERY FROM NAMIBIA, IN SPITE OF THE OPINION OF THE INTERNATIONAL COURT OF JUSTICE WHICH HAS UPHELD THE TERMINATION OF SOUTH AFRICAN MANDATE OVER NAMIBIA. RECENTLY, SOUTH AFRICA RUSHED LEGISLATION THROUGH ITS PARLIAMENT REPEALING EARLIER LAWS WHICH HAD MADE WALVIS BAY AN INTEGRAL PART OF NAMIBIA. IT HAS SUBSEQUENTLY TAKEN ADMINISTRATIVE ACTION TO ENFORCE ITS SPURIOUS TITLE TO WALVIS BAY. IT IS SUCH ACTS OF OPEN DEFIANCE OF THE UNITED NATIONS THAT COMPEL THE COUNCIL FOR NAMIBIA TO INSIST THAT THE PROPOSED CONVENTION ON SUCCESSION OF STATES IN RESPECT OF TREATIES SHOULD FULLY TAKE NOTE OF AND REFLECT THE REALITIES OF THE ONLY INTERNATIONAL TERRITORY UNDER UNITED NATIONS RESPONSIBILITY. TO THAT

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END THE COUNCIL FOR NAMIBIA HAD PROPOSED AT THE LAST

SESSION AN AMENDMENT TO THE PREAMBLE OF THE CONVENTION
(CONTAINED IN DOCUMENT A/CONF.80/DC.13) AS FOLLOWS:
'TAKING INTO ACCOUNT GENERAL ASSEMBLY RESOLUTION 2145
(XXI) OF 27 OCTOBER 1966, BY WHICH THE GENERAL ASSEMBLY
OF THE UNITED NATIONS TERMINATED THE MANDATE OF SOUTH
AFRICA OVER SOUTH-WEST AFRICA (NAMIBIA) AND ASSUMED DIRECT
RESPONSIBILITY FOR THE TERRITORY UNTIL ITS INDEPENDENCE,'
THE COUNCIL WOULD EXPRESS THE HOPE THAT THE PROPOSED
PARAGRAPH WILL BE INCLUDED IN THE PREAMBLE SO AS TO
ENSURE THAT SOUTH AFRICA IS NOT THE "PREDECESSOR STATE" IN
THE CASE OF NAMIBIA. UNQUOTE.

2. IN CONCLUSION IN THE PREAMBLE OF THE LANGUAGE PROPOSED
BY THE UN COUNCIL FOR NAMIBIA MAY BE INTENDED TO HAVE
THE LEGAL CONSEQUENCE THAT THE U.N. COUNCIL FOR NAMIBIA
WILL BE CONSIDERED THE "PREDECESSOR STATE" WITHIN THE
MEANING OF THE CONVENTION. SINCE THE COUNCIL HAS NO
TREATY RELATIONSHIPS WITH ANY STATE, AN INDEPENDENT
STATE OF NAMIBIA WOULD BE ENTIRELY FREE OF ANY PRIOR
TREATY OBLIGATIONS, INCLUDING BOUNDARIES AND OTHER
TERRITORIAL REGIMES WHICH WOULD OTHERWISE BE CONTINUED
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UNDER ARTICLES 11 AND 12 OF THE CONVENTION. WE ASSUME
THAT THE UN COUNCIL ON NAMIBIA MAY ALSO SEEK TO SIGN
THE CONVENTION, ALTHOUGH THERE HAS NOT AS YET BEEN ANY
MORE SPECIFIC MOVE IN THAT DIRECTION. WOULD APPRECIATE
DEPARTMENT VIEW. WOLF

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